

# Right to Information Legislation in Pakistan

Challenges & Success Stories



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## ABOUT THIS REPORT

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This report constitutes an attempt to document a concise history of the right to information (RTI) legislation and regime in Pakistan, including listing success stories, challenges and lessons learnt from the cumulative efforts undertaken by all key stakeholders, including the civil society, federal and provincial legislatures, political parties and rights activists. It also includes technical evaluation of the various RTI laws (past and present) of Pakistan and lists their strengths and shortcomings.

The purpose of this report is to inform and educate policymakers, parliamentarians, governments, civil society, rights activism circles, bureaucrats, journalists, media and law faculties of academia, researchers and the general public interested in understanding why and how the right to information, which is now a fundamental guarantee for the citizens of Pakistan under the national Constitution, is central to good governance, citizen's empowerment and the development paradigm.

This report has been authored by Zahid Abdullah, an international expert on right to information issues and an activist and chronicler of RTI-related activism in Pakistan. Technical assistance, peer review and expert inputs in the development of this report were provided by Adnan Rehmat, a media activist and development professional, and Muhammad Aftab Alam, a media law expert.

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## List of Abbreviations

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<b>RTI</b>	Right to information
<b>FOI</b>	Freedom of Information
<b>CLD</b>	Centre for Law and Democracy
<b>CPDI</b>	Centre for Peace and Development Initiatives
<b>FOIO</b>	Freedom of Information Ordinance 2002
<b>RTI Bill</b>	Right to Information Bill
<b>RAI Bill</b>	Right of Access to Information Bill
<b>PTRT</b>	Punjab Transparency and Right to Information Act 2013
<b>KP</b>	Khyber Pakhtunkhwa
<b>PIO</b>	Public Information Officer

## Executive Summary

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In 2017, there were two sets of RTI laws in Pakistan – the Freedom of Information Ordinance 2002, the Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006, repealed in 2017, belong to the first generation of RTI laws. These laws, in general, do not adhere to standards of effective right to information legislation as judged against international standards and best practices. These standards are: maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for the requested information, and disclosure taking precedence over exemption.

The Khyber Pakhtunkhwa Right to Information Act 2013, the Punjab Transparency and Right to Information Act 2013 and the Sindh Transparency and Right to Information Act 2016 belong to the second generation of RTI laws. These laws, in general, adhere to all the standards of effective right to information legislation.

Key advocacy lessons from recent years in Pakistan lead to the conclusion that civil society groups need to keep a watchful eye on bureaucrats throughout the RTI legislation phase as officialdom tends to weaken RTI laws. Enacting effective RTI legislation is one thing and putting these laws into action is quite another. The experience is that political leadership and bureaucracy try to hamper implementation of RTI laws as has been the case in Punjab. Information Commissions need to be more proactive in implementing their respective RTI laws. The federal FOIO 2002 and Balochistan Freedom of Information Act 2005 need to be repealed and effective RTI laws in their place need enacted at the earliest in consultation with civil society groups, to bring them on a par with the other, much better legislation in the country.





# Chronology of RTI Legislation in Pakistan

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**January 29, 1997:** President Farooq Khan Leghari promulgates ordinance on Freedom of Information drafted by Fakhruddin G. Ebrahim.

**October 26, 2002:** Military government promulgates Freedom of Information Ordinance 2002.

**June 18, 2004:** Cabinet Division notifies The Freedom of Information Rules 2004.

**December 6, 2005:** Provincial Assembly of Balochistan enacts Balochistan Freedom of Information Act.

**August 10, 2006:** Governor Sindh promulgates Sindh Freedom of Information Ordinance 2006.

**April 08, 2010:** Article 19A inserted in the constitution through 18th Amendment and right to information is acknowledged as fundamental constitutional right.

**September 13, 2006:** Provincial Assembly of Sindh enacts Sindh Freedom of Information Act 2006.

**August 18, 2013:** Governor promulgates Khyber Pakhtunkhwa Right to Information Ordinance 2013

**August 28, 2013:** Senate Committee on Information and Broadcasting approves the draft of Right to Information Act 2013.

**October 04, 2013:** Governor promulgates Punjab Transparency and Right to Information Ordinance 2013.

**October 31, 2013:** Provincial Khyber Pakhtunkhwa Assembly passes Khyber Pakhtunkhwa Right to Information Act 2013.

**November 05, 2013:** Khyber Pakhtunkhwa Right to Information Act 2013 is notified in the official gazette.

**12 December, 2013:** Provincial Assembly of Punjab passes Punjab Transparency and Right to Information Act 2013.

**December 16, 2013:** Punjab Transparency and Right to Information Act 2013 is notified in the official gazette.

**July 15, 2014:** The Senate Standing Committee on Information and Broadcasting and National Heritage approves the Right to Information Bill 2013 with proposed amendments.

**January 13, 2015:** Punjab Government notifies the Punjab Transparency and Right to Information Rules 2014.

**June 23, 2015:** Khyber Pakhtunkhwa Assembly exempts itself from the purview of Khyber Pakhtunkhwa Right to Information Act 2013.

**February 14, 2017:** Senate committee approves Right to Information Bill

**March 13, 2017:** Sindh Assembly repeals Sindh Freedom of Information Act 2006 and enacts Sindh Transparency and Right to Information Act 2016.

# Ranking of Federal and Provincial RTI Legislation in Pakistan

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Freedom of Information Ordinance 2002 stands at 69th position in the world as ranked by Centre for Law and Democracy, (CLD) in 2011.

As CLD only ranks national RTI laws, the only organisation in Pakistan that ranks sub-national RTI laws is the Centre for Peace and Development Initiatives, (CPDI). As the following table shows, both FOIO 2002 and its replica in Balochistan in the shape of Balochistan Freedom of Information Act 2005 are the weakest laws in Pakistan and score only 30 out of a total of 140 points. The most robust and progressive law in Pakistan is the Punjab Transparency and Right to Information Act 2013 which scores an impressive 139 points. The Sindh Transparency and Right to Information Act 2016 scores 130 points whereas the Khyber Pakhtunkhwa Right to Information Act 2013 scores 129 points.

## CPDI Score Sheet of Right to Information Laws in Pakistan

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act2005		Khyber Pakhtunkhwa Right to Information Act2013	Punjab Transparency and Right to Information Act2013	Sindh Transparency and Right to Information Act 2016		
Law is guided by the principle of maximum disclosure	0	0	Under principle of maximum disclosure, a narrowly and clearly drawn list contains types of information to be exempted from disclosure. The rest is declared public information. This is not the case in these laws. Furthermore, harm test is not included in these laws.	10	10	10	These three laws contain a narrowly and clearly drawn list of exempted information and the rest of the information is declared public information. Furthermore, these laws have harm test and specifically mention that even if the requested information belongs to categories of exempted information, it will be provided if the public interest outweighs the harm.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Exceptions are clearly and narrowly drawn	0	0	There is no definition of information. Instead of having one clearly defined short list of exempted information and declaring the rest as public information, these laws have separate lists; records that can be shared, records that cannot be shared and records that can be shared but	9	10	10	These three laws have defined information. The definition of information in Khyber Pakhtunkhwa Right to Information Act 2013 is precise and left to the interpretation of the public officials whereas in the Punjab Transparency and Right to Information Act 2013 and the Sindh Transparency and RTI Act 2016, the definition is comprehensive and in detail. The list of exempted information is narrowly and clearly drawn.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Law provides for speedy and easy access to information	1	1	These laws allow 21 working days to public bodies for providing access to the requested information. There is no provision for expediting the process of providing the requested information if it pertains to life or liberty of a person.	10	10	10	In Khyber Pakhtunkhwa law, the requested information has to be provided within 10 working days, in the Punjab law the requested information has to be provided within 14 working days, whereas in Sindh Transparency & RTI Act 2016 requested information is to be provided within 15 working days. However, all these specifically mention that if the requested information pertains to the life or liberty of a person, it will be provided within 2 working days. All these laws adhere to the principle of providing requested information within reasonable time frame.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Law provides cost effective access to information	3	3	Under rules framed for FOI Ordinance 2002 and Balochistan FOI Act 2005 information requests can only be submitted after depositing Rs. 50 in National Bank of Pakistan which covers first 10 pages of information. Rs. 5 are charged for each extra page.	10	10	10	There is no fee for filing information and for the first 20 pages of the requested information. However, RS. 2 will be charged for every extra page and the applicant will have to bear the postal cost according to Schedule of Fees introduced by Khyber Pakhtunkhwa Information Commission. Whereas, RS. 2 will be charged for every extra copy and applicant will not have to bear postal cost according to Schedule of Costs introduced by Punjab Information Commission. Sindh Transparency and RTI Act 2016 say that PIO shall not charge any fee for making the request other than the cost of reproducing and sending the information in accordance with the schedule of cost stipulated by Sindh Information Commission.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
There is an effective complaint redressal mechanism available	3	3	Under Balochistan and Sindh laws, affidavit has to be submitted prior to lodging the complaint testifying that no complaint regarding this matter has already been submitted and that no law-suit is pending pertaining to the matter with any court. Federal Ombudsman requires a form to be filled after lodging the complaint testifying the same. No time-frame for the office of Ombudsman in Balochistan.	9	10	10	No need to furnish any kind of affidavit while lodging complaints with the commission. Furthermore, Punjab and KP Information commissions are bound to take decisions on complaints within sixty days. Whereas Sindh Information Commission is bound to take a decision on a complaint within 45 days. However, Khyber-Pakhtunkhwa Right to Information (Amendment) Bill 2015 has created confusion as Amendment in Section 23 does not specifically say that appeal against the decisions of the Commission will be made in Peshawar High Court.	10



Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Law imposes penalty on the officer for wrongfully denying/delaying access to the requested information	0	0	There is no such penalty.	9	10	10	A fine of Rs. 250 per each day of the delay can be imposed under Khyber Pakhtunkhwa law which can go up to Rs. 25000. Under the Punjab law, 2 days of salary can be deducted for each day of the delay or fine up to 50000 can be imposed. Under Sindh Transparency and RTI Act 2016 the commission can impose a fine of 10 % of the basic salary of PIO.	10
Law requires proactive disclosure	0	0	There is no such provision.	10	10	10	Comprehensive list containing categories of information that has to be proactively disclosed is included in these laws.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Law does not require description of specific interest with information requested	0	0	The purpose for seeking the information has to be described.	10	10	10	There is no such provision.	10
Law recognizes the willful destruction of records as a criminal offense	7	7	It is criminal offence to destroy any record if an information request is submitted to have access to the record or complaint is lodged in this regard. The penalty for such an offence is imprisonment up to 2 years, with fine or both.	10	10	10	In Punjab and KP RTI laws, it is criminal offence to destroy any record if an information request is submitted to have access to the record or complaint is lodged in this regard. The penalty for such an offence is imprisonment up to 2 years or with fine up to 10000 or both. Under Sindh RTI Law, it is also a criminal offence and it is punishable with imprisonment for a term which may extend to 2 years and six month or fine which will not be less than 10,000 or 10 % of the basic pay or with both.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act2005		Khyber Pakhtunkhwa Right to Information Act2013	Punjab Transparency and Right to Information Act2013	Sindh Transparency and Right to Information Act 2016		
Right to Information law takes precedence over all other laws contradicting its aim	0	0	These laws do not override other laws.	10	10	10	All these laws override other laws.	10
Law has provisions that allows Inspection of documents before getting access	0	0	There is no such provision in these laws.	10	10	10	Right of access to information also includes right to inspect documents, samples and materials etc	10
Law requires it as a duty of information officer to assist applicant	3	3	The duty to assist the person is mentioned in these laws but not elaborated.	5	5	0	Public Information Officers are duty-bound to facilitate the disabled and the illiterate in filing information requests. Whereas there is no such provision in Sindh RTI Law.	5

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act 2005		Khyber Pakhtunkhwa Right to Information Act 2013	Punjab Transparency and Right to Information Act 2013	Sindh Transparency and Right to Information Act 2016		
Law makes head of public body responsible to act as information officer in the absence or unavailability of Information officer	10	10	If an official has not been designated, the head of public body is made responsible for providing the requested information.	10	10	10	Head of public body is to serve as Public Information Officer in the Khyber Pakhtunkhwa law and the Sindh RTI Law in the absence or unavailability of the PIO. Head of public body is to serve as Public Information Officer if PIO has not been designated under the Punjab Transparency and Right to Information Rules 2014.	10
Law has a comprehensive definition of Public Body	3	3	Organizations funded by government do not come within the purview of these laws.	7	10	10	Organizations substantially funded by public funds come within the purview of these laws. The Khyber Pakhtunkhwa law specifically excludes Peshawar High Court from the definition of the Public body.	10

Standards of Right to Information Legislation	Score under each standard of Right to Information Legislation		Comments	Score under each standard of Right to Information Legislation			Comments	Weight-age
	Freedom of Information Ordinance 2002	Balochistan Freedom of Information Act2005		Khyber Pakhtunkhwa Right to Information Act2013	Punjab Transparency and Right to Information Act2013	Sindh Transparency and Right to Information Act 2016		
Law does not prescribe penalties for applicant for alleged vexatious applications	0	0	Under these laws, if complaint is found to be 'frivolous, vexatious and malicious', Ombudsman can impose fine up to Rs. 10,000.	0	5	0	Under the Khyber Pakhtunkhwa and Sindh RTI laws, it is criminal offence to use information 'malafiedly' purposes with.	5
Total	30	30		129	139	130		140

# A Brief Analysis of Federal FOI Law and Upcoming Federal RTI Legislation

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The federal FOI Ordinance 2002 is a weak and ineffective law. That is why both Pakistan Muslim League-N (PML-N) and Pakistan People's Party (PPP), the country's two major political parties, committed in their landmark Charter of Democracy compact in 2006 that this law will be repealed and instead a new RTI law will be enacted.

How exactly is the FOIO 2002 an ineffective law? It does not meet international standards of an effective RTI legislation. These standards include: maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for the requested information, and disclosure taking precedence over exemption.

An effective RTI law contains one list of exempted information and declares the rest to be public information. This is not the case in the FOIO 2002. The first list contains a limited number of records to be shared and the second contains records given blanket exemption from disclosure. The third list contains exceptions under which public bodies could deny access to requested data.

A key principle of effective RTI legislation is that information

should be shared if its disclosure outweighs possible harm. For this, effective laws empower commissions to apply ‘harm tests’ and see the exempted information through the prism of public interest.

The FOIO 2002 empowers the government to give blanket exemptions to any record it deems unfit for disclosure. Furthermore, instead of establishing an independent and autonomous information commission, the FOIO 2002 entrusts the implementation to the Federal Ombudsman, which has proven to be an ineffective body as it is not empowered to impose any fine or penalty on officials for unlawfully delaying or denying access to requested information. Furthermore, the Federal Ombudsman is not tasked to train Public Information Officers (PIOs), develop transparency standards, monitor compliance of the FOIO 2002 by federal public bodies and recommend government to review laws that are against the spirit of right to information legislation. Lastly, the process of filing information requests is neither cost-effective nor easy. An applicant is required to submit Rs50 for filing information request which covers first five pages and for each extra page, an applicant is required to pay Rs2 per page.

The Senate Standing Committee unanimously approved Right to Information Bill in 2013. Instead of adopting this unanimously approved RTI Bill, the government entrusted the task to bureaucracy and it instead came up with the Right of Access to Information Bill 2015.

A comparative analysis shows how the Senate’s bill, developed by politicians in consultation with experts, is far better than the cabinet’s bill, developed in consultation with the federal bureaucracy.

The RAI Bill 2015 sacrifices principles of public interest in favour of perceived notions about national interest. Ironically, the bill is modelled on the structurally flawed and ineffective FOIO 2002, which it seeks to repeal.

In fact, the bill is so flawed that it is better understood as legislation seeking to privilege and protect information rather than to facilitate citizens accessing it. Whereas the RTI Bill 2013 contains one clearly defined short list of exempted information and declares the rest as public information, the RAI Bill 2015 contains three lists. The first list contains a limited number of records to be shared and the second contains records given blanket exemption from disclosure. The third list contains exceptions under which public bodies could deny access to requested data.

A key principle of effective RTI legislation is that information should be shared if its disclosure outweighs possible harm. For this, effective laws empower commissions to apply ‘harm tests’ and see the exempted information through the prism of public interest.

The RAI Bill 2015, however, empowers the government to give blanket exemptions to any record it deems unfit for disclosure. In contrast, the proposed Pakistan Information Commission is not empowered to instruct public agencies to disclose information to the public. In this scheme of things, the likely harm to national interest, as perceived by public officials, will always trump the right of citizens to access information of public importance.



# Khyber Pakhtunkhwa Right to Information Act 2013

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Enacted on 31, 2013, the Khyber Pakhtunkhwa Right to Information Act 2013 was the most robust and progressive sub-national RTI law at that time. It should be remembered that at that time, Punjab did not have an RTI law at all and replicas of FOIO 2002 were still in place in Sindh and Balochistan provinces. This law was enacted as a part of governance reforms agenda of Pakistan Tehrik-e-Insaf (PTI), a relatively new party on the political scene. The enactment of this law paved the way for the enactment of an effective RTI law in Punjab as well where PML-N had been dithering on the issue of enacting RTI law for a province housing over 100 million people.

The KP RTI Act 2013 follows all the principles of effective RTI legislation such as maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for requested information and disclosure taking precedence over exemption. There is one list of exempted information and the rest is declared public information. Even information which is otherwise exempted from disclosure will be provided if disclosure of information is in public interest and outweighs the harm. Citizens do not only have the right to access copies of public records, they can also take notes from public documents. The law also allows citizens to inspect

documents. Section 5 of KP RTI Act 2013 requires public bodies to ensure proactive disclosure of information.

Access to information is also cost-effective and easy. Only citizens of Pakistan can file information request under KP RTI Act 2013. Citizens can file information requests on a plain paper, through emails or in person. The KP RTI Act 2013 says that there is no fee for filing information requests. Fee can only be charged for the actual reproduction and sending it to the applicant and first 20 pages of the requested information will be free of cost.

The KP RTI Act 2013 envisages establishment of independent and autonomous information commission to develop transparency standards for KP public bodies; dispose complaints in timely manner; ensure disclosure of information; develop schedule of fees; create mass awareness about rights of people under the law; compile guidelines for officials; train PIOs; develop monitoring mechanism to monitor and report on the compliance by public bodies; publish its annual report and frame rules and regulations.

The KP RTI Act 2013 says that Chief Information Commissioner will be a retired public servant of not below Grade 20. One commissioner will be taken from judiciary and one from civil society. The Information Commissioner from civil society will be a person with experience of not less than 15 years in the field of mass communication, academic or RTI. The Information Commissioner from judiciary will be an advocate of high court or supreme court, who is qualified to be a judge of high court. Under KP RTI Act 2013, all public bodies are bound to designate PIOs to ensure implementation of this law. If a public body does not designate a Public Information Officer, information requests can be filed to head of the public body. A public body is not allowed to ask an

applicant to provide reason for filing information request. A PIO is required not only to decide on information requests but also required to facilitate the disabled and the illiterate in filing information requests. A PIO is required to provide the requested information within 10 working days, 10 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected from different offices or permission of the third party is required.

Information pertaining to the life and liberty of a person is to be provided within two working days. If a PIO unlawfully delays or denies access to requested information, a citizen can lodge complaint with KP Information Commission. The commission is bound to decide on the complaint within 60 days. Decisions of the KP Information Commission are final and only writ petition can be lodged in Peshawar High Court against the decision. The commission is empowered to impose a daily fine of up to Rs250 per day, up to a maximum of Rs25,000 on a public official who delays or denies access to information. Wilful destruction of record is an offence liable to a fine not exceeding Rs50,000 or imprisonment for a period not exceeding two years.

The KP RTI Act 2013 gives blanket exemption to Peshawar High Court as law specifically says that information can be sought from subordinate judiciary only. The greatest blemish on KP RTI Act 2013 is that it declares information obtained through this law a punishable offence if the information is used for ‘malafiedly purposes with ulterior motives with facial, fabulous design’. An RTI law should only be concerned about facilitating access of citizens to maximum information in a cost-effective and easy manner as there are other laws to deal with issues pertaining to the misuse of information.

# The Punjab Transparency and Right to Information Act 2013

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Enacted on 16 December, 2013, the Punjab Transparency and Right to Information Act 2013 is the most robust and progressive RTI law in Pakistan. The PMLN provincial government had been dragging its feet on RTI legislation but its hand was forced when PTI enacted the KP RTI Act 2013 on October 31, 2013.

The PTRTI Act 2013 follows all the principles of effective RTI legislation such as maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for requested information and disclosure taking precedence over exemption. Like KP RTI Act 2013, there is one list of exempted information and the rest is declared public information. Even information which is otherwise exempted from disclosure will be provided if disclosure of information is in public interest and outweighs the harm. Citizens do not only have the right to access copies of public records, they can also take notes from public documents. The law also allows citizens to inspect documents. Section 4 of the PTRTI Act 2013 requires public bodies to ensure proactive disclosure of information.

Access to information is also cost-effective and easy. Not only citizens of Pakistan can file information request under the PTRTI

Act 2013, registered legal entities can also file information requests. Citizens can file information requests on a plain paper, through emails or in person. The PTRTI Act 2013 says that there is no fee for filing information requests. Fee can only be charged for the actual reproduction and sending it to the applicant under the PTRTI 2013. Like KP RTI Act 2013, the PTRTI Act 2013 also envisages establishment of independent and autonomous information commission to develop transparency standards for Punjab public bodies; dispose complaints in timely manner; ensure disclosure of information; develop schedule of fees; create mass awareness about rights of people under the law, compile guidelines for officials; train PIOs, develop monitoring mechanism to monitor and report on the compliance by public bodies; publish its annual report; and frame rules and regulations.

One blemish in the PTRTI Act 2013 is that it says the commission will consist of ‘not more than three information commissioners’. It effectively means that there cannot only be one-member commission but it can be headed by a serving bureaucrat. The law says that information commissioner can be a person who has been or is qualified to be the judge of high court; a person who is or has been in the service of Pakistan in Grade 21 or equivalent and a person from civil society having a degree based on 16 years of education from a recognized institution and experience of not less than 15 years in the field of mass communication, academic or RTI.

Under the PTRTI Act 2013, all Punjab public bodies are bound to designate PIOs to ensure implementation of this law. However, the law is silent in the case if a public body does not designate a PIO though head of public body is to serve as a PIO under the PTRTI Rules 2014. Like the KP RTI 2013, a public body is not allowed to

ask an applicant to provide reason for filing information request. A Public Information Officer is required not only to decide on information requests but also required to facilitate the disabled and the illiterate in filing information requests. A PIO is required to provide the requested information within 14 working days, 14 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected from different offices or permission of the third party is required.

Information pertaining to the life and liberty of a person is to be provided within two working days. If a PIO unlawfully delays or denies access to requested information, a citizen can either file a review application with head of the public body or lodge complaint with Punjab Information Commission. The commission is bound to decide on the complaint within 30 days. However, the commission can take further 30 days in deciding on a complaint but reasons will have to be recorded in writing for the delay. Decisions of Punjab Information Commission are final and only writ petition can be lodged in Lahore High Court against the decision. The commission is empowered to impose a fine amounting to two days of the salary of a PIO for each day of the delay on a public official who unlawfully delays or denies access to information or order to pay fine which may extend to Rs50,000. Wilful destruction of record is an offence liable to a fine not exceeding Rs10,000 or imprisonment for a period not exceeding two years or both.

# Sindh Transparency and Right to Information Act 2016

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Sindh Assembly passed Sindh Transparency and Right to Information Act 2016 on March 13, 2017. Enactment of the KP RTI Act 2013 and the PTRTI Act 2013 mounted pressure on the PPP government in Sindh to repeal the Sindh Freedom of Information Act 2006 and enact an effective law for the province. Like KP RTI Act 2013 and the PTRTI 2013, the STRTI Act 2016 also follows all the principles of effective RTI legislation such as maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for requested information and disclosure taking precedence over exemption. There is one list of exempted information and the rest is declared public information. Even information, which is otherwise exempted from disclosure, will be provided if disclosure of information is in public interest and outweighs the harm. Citizens do not only have the right to access copies of public records, they can also take notes from public documents. The law also allows citizens to inspect documents. However, unlike the KP RTI Act 2013 and the PTRTI Act 2013, citizens cannot take samples of material under this law. Section 6 of STRTI Act 2016 requires public bodies to ensure proactive disclosure of information.

Access to information is also cost-effective and easy. Like the

PTRTI Act 2013, not only citizens of Pakistan can file information request under STRTI Act 2016 but registered legal entities can also file information requests. The STRTI Act 2016 says that citizens can file information requests in any manner which can be interpreted that they will be able to file information requests on a plain paper, through emails or in person. The STRTI Act 2016 says that public bodies can only charge fee for the cost of reproducing and sending information to applicants. The STRTI Act 2016 envisages establishment of independent and autonomous information commission to develop transparency standards for Sindh public bodies; dispose complaints in timely manner; ensure disclosure of information; develop schedule of fees; create mass awareness about rights of people under the law; compile guidelines for officials; train PIOs; develop monitoring mechanism to monitor and report on the compliance by public bodies; publish its annual report and frame rules and regulations.

The STRTI Act 2016 says that Chief Information Commissioner will be a retired public servant of not below Grade 20. One commissioner will be taken from judiciary and one from civil society. The Information Commissioner from civil society will be a person with experience of not less than 15 years in his or her profession. The Information Commissioner from judiciary will be an advocate of high court or supreme court, who is qualified to be a judge of the high court. Under the STRTI Act 2016, all public bodies are bound to designate PIOs to ensure implementation of this law. If a public body does not designate a PIO, information requests can be filed to head of the public body. A PIO is required to provide the requested information within 15 working days, 10 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected



from different offices or permission of the third party is required.

Information pertaining to the life and liberty of a person is to be provided within two working days. If a PIO unlawfully delays or denies access to requested information, a citizen will first lodge complaint with head of the public body. If the applicant is not satisfied with the decision of the head of public body, the applicant could lodge complaint with Sindh Information Commission. The commission is bound to decide on the complaint within 45 days. Decisions of Sindh Information Commission are final and only writ petition can be lodged in Sindh High Court against the decision. The commission is empowered to impose a fine of up to 10% of the basic pay of PIO. Wilful destruction of record is an offence and the punishment is imprisonment for a term, which may extend to two years six months or with fine which shall not be less than Rs10,000 or 10% percent of his basic pay or with both. The STRTI Act 2016 overrides all other laws.

The greatest blemish on the STRTI Act 2016 is that it declares information obtained through this law a punishable offence with a fine of Rs100,000 or imprisonment of three months if the information is used for ‘malafiedly purposes with ulterior motives with facial, fabulous design’.

# Freedom of Information Ordinance 2002 and Baluchistan Freedom of Information Act 2005

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Unlike the KP RTI Act 2013, the PRTI Act 2013 and the STRTI Act 2016, the FOIO 2002 and the Balochistan Freedom of Information Act 2005 are not being analysed separately because both these laws are exactly the same. The only difference being that while the FOIO 2002 is applicable to federal public bodies, the BFOI Act 2005 is applicable to Balochistan public bodies.

The FOIO 2002 and BFOI Act 2005 do not meet international standards of effective right to information legislation. These standards include maximum disclosure; minimal exemptions; obligation for proactive disclosure; process to facilitate access to information; minimum cost for the requested information; and disclosure taking precedence over exemption.

An effective RTI law contains one list of exempted information and declares the rest to be public information. This is not the case in FOIO 2002 and BFOI Act 2005. Both these laws contain three lists. The first list contains a limited number of records to be shared and the second contains records given blanket exemption from disclosure. The third list contains exceptions under which public bodies could deny access to requested data.

A key principle of effective right to information legislation is that information should be shared if its disclosure outweighs possible harm. For this, effective laws empower commissions to apply ‘harm tests’ and see the exempted information through the prism of public interest.

Both FOIO2002 and BFOI Act 2005 empower the government to give blanket exemptions to any record it deems unfit for disclosure. Furthermore, instead of establishing an independent autonomous information commissions, the FOIO 2002 entrusts the implementation to Federal Ombudsman and the BFOI Act 2005 entrusts Balochistan Ombudsman, which have proven to be an ineffective body as they are not empowered to impose any fine or penalty on officials for unlawfully delaying or denying access to requested information. Furthermore, the Federal Ombudsman and Balochistan Ombudsman are not tasked to train PIOs, develop transparency standards, monitor compliance of their respective laws by public bodies and recommend government to review laws that are against the spirit of right to information legislation.

Lastly, the process of filing information requests is neither cost-effective nor easy. An applicant is required to submit Rs50 for filing information request which covers first five pages and for each extra page, an applicant is required to pay Rs5 per page. Applications can be filed with the designated officers and in case officers have not been designated by public bodies, information requests can be filed with the head of the public body. Public bodies are bound to respond to the applicant within 30 days however appellate bodies are not time bound to decide on the complaints. Both Federal Ombudsman and Balochistan Ombudsman are not empowered to impose penalty on officers for

unlawfully delaying or denying access to requested information. Under both these laws, destruction of record is a punishable offence with a term of two years and Rs10,000 or both. Both these laws do not override other laws which means provisions of the Official Secrets Act and other such laws are still in the field in matters pertaining to access to information.

Owing to these weaknesses, civil society groups have been demanding repeal of the FOIO 2002 and its replicas in Sindh and Balochistan.

# Comparative Analysis of RTI laws of Pakistan

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The RTI laws in Pakistan can be categorised, for the sake of better understanding, into two broad categories – the first generation RTI laws and second generation RTI laws. The FOIO 2002 and its replicas such as the BFOI Act 2005 and the repealed Sindh Freedom of Information Act 2006 belong to the first generation of RTI laws whereas the KK RTI Act 2013, the PTRTI Act 2013 and the STRTI Act 2016 belong to the second generation of RTI laws.

The important distinction between the first and second generation RTI laws is that whereas the latter largely follow standards of effective RTI, the first generation RTI laws either do not follow these standards completely or, in many cases, even violate these standards. Furthermore, there are certain variations in the way the second generation RTI laws follow these standards.

In the preceding chapters on first generation RTI laws, we have dwelt at length how these laws fall short of meeting effective RTI legislation. These laws do not follow the principle of maximum disclosure, there is no ‘harm’ test, no provisions pertaining to proactive disclosure of information and appellate bodies are not empowered to impose fine on officials for unlawfully denying or delaying access to information.

The first generation RTI laws follow all the principles of effective

RTI legislation such as maximum disclosure, minimal exemptions, obligation for proactive disclosure, process to facilitate access to information, minimum cost for requested information and disclosure taking precedence over exemption. In all these laws, i.e., KP RTI Act 2013, the PTRTI Act 2013 and the STRTI Act 2016, there is one list of exempted information and the rest is declared public information. Even information which is otherwise exempted from disclosure will be provided if disclosure of information is in public interest and outweighs the harm. Citizens do not only have the right to access copies of public records, they can also take notes from public documents. These laws also allow citizens to inspect documents. There are specific sections that require public bodies to ensure proactive disclosure of information.

The STRTI Act 2016 law is restricted in the sense that citizens cannot take certified samples of material, which is the case in the PTRTI Act 2013 and the KP RTI Act 2013. Access to information is also cost-effective and easy. Under the PTRTI Act 2013 and the STRTI Act 2016, not only citizens of Pakistan can file information request, registered legal entities can also file information requests. However, under KP RTI Act 2013, only citizens of Pakistan can file information requests. Citizens can file information requests on a plain paper, through emails or in person. A fee can only be charged for the actual reproduction and sending it to the applicant under the PTRTI Act 2013, the KP RTI Act 2013 and the STRTI Act 2016. Furthermore, the KP RTI Act 2013, the STRTI Act 2016 and the PTRTI Act 2013 mention that there is no fee for filing information requests. However, the KP RTI Act 2013 law also says that the first 20 pages of the requested information would be provided free of cost whereas schedule of fee will determine the cost of extra pages.

All these laws also envisage establishment of independent and autonomous information commission to develop transparency standards for public bodies; dispose complaints in timely manner; ensure disclosure of information; develop schedule of fees; create mass awareness about rights of people under the law; compile guidelines for officials; train PIOs; develop monitoring mechanism to monitor and report on the compliance by public bodies; publish its annual report and frame rules and regulations. However, all these tasks are not mentioned in first generation RTI laws.

One blemish in the PTRTI Act 2013 is that it says the commission will consist of ‘not more than three information commissioners’. It effectively means that there cannot only be one-member commission but it can be headed by a serving bureaucrat. All these laws say that commissioner can be a person who has been or is qualified to be the judge of high court; a person who is or has been in the service of Pakistan in Grade 21 or equivalent and a person from civil society having a degree based on 16 years of education from a recognized institution and experience of not less than 15 years in their profession.

Under the PTRTI Act 2013, the KP RTI Act 2013 and STRTI Act 2016, public bodies are bound to designate PIOs to ensure implementation of these laws. However, the PTRTI Act 2013 is silent in the case if a public body does not designate a PIO though head of public body is to serve as a PIO under the PTRTI Rules 2014. Under all these laws, a public body is not allowed to ask an applicant to provide reason for filing information request. However, the STRTI Act 2016 says that burden of proof will be on

the applicant to demonstrate that the PIO did not act on information request as required by the law. A PIO is required not only to decide on information requests but also required to facilitate the disabled and the illiterate in filing information requests under both the PTRTI Act 2013 and the KP RTI Act 2013. However, the STRTI Act 2016 does not have any such provision. Under the PTRTI Act 2013, a PIO is required to provide the requested information within 14 working days, 14 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected from different offices or permission of the third party is required.

Under the KP RTI Act 2013, a PIO is required to provide the requested information within 10 working days, 10 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected from different offices or permission of the third party is required. Under the STRTI Act 2016, a PIO is required to provide the requested information within 15 working days, 10 extra working days can be taken provided requested information is to be collected from a large number of records or is to be collected from different offices or permission of the third party is required. Information pertaining to the life and liberty of a person is to be provided within two working days under all these laws. whereas there is no such provision in 1st generation RTI laws. If a PIO unlawfully delays or denies access to requested information, a citizen can either file a review application with head of the public body or lodge complaint with Punjab Information Commission.

Under the STRTI Act 2016, citizen has to first file review with the head of public body and if not satisfied, he/she can lodge complaint



with Sindh Information Commission. Citizens do not have the option or compulsion to first file review with head of public body prior to lodging complaint with the KP Information Commission under the KPRTI Act 2013.

The KP Information Commission is bound to decide on complaints within 60 days, the Punjab Information Commission within 30 days but can take extra 30 days but reasons for the delay have to be recorded in writing. The Sindh Information Commission is bound to decide on complaints within 45 days. Decisions of Sindh, Punjab and KP information commissions are final and only writ petitions can be lodged in high courts against the decisions of information commissions. The commissions are empowered to impose fines. However, while the KP RTI Act 2013 has fixed amount to be imposed as a fine, the PTRTI Act 2013 and the STRTI Act 2016 have come up with innovative way of imposing fine. Under Punjab and Sindh RTI laws, fine is linked with the salary of the person. Under the Punjab Transparency and Right to Information Act 2013, two days of salary for each day of the delay and under the STRTI Act 2016 ten percent of the salary can be deducted as a fine.

Wilful destruction of record is an offence liable to a fine not exceeding Rs10,000 or imprisonment for a period not exceeding two years or both. Under the KP RTI Act 2013, wilful destruction of record is an offence liable to a fine not exceeding Rs50,000 or imprisonment for a period not exceeding two years. Under the STRTI Act 2016, wilful destruction of record is an offence and the punishment is imprisonment for a term, which may extend to two years six months or with fine which shall not be less than Rs10,000 or 10% percent of his basic pay or with both.

Of these three laws belonging to the second generation of RTI laws, only the KP RTI Act 2013 gives blanket exemption to Peshawar High Court while the KP RTI Act 2013 and the PTRTI Act 2013 do not provide blanket exemption to their respective high courts.

The greatest blemish on both the KP RTI Act 2013 and the STRTI Act 2016 is that these laws declare possible misuse of information attained through these laws as a criminal offence whereas there is no such provision in the PTRTI Act 2013. The STRTI Act 2016 declares information obtained through this law a punishable offence with a fine of Rs100,000 or imprisonment of three months if the information is used for ‘malafiedly purposes with ulterior motives with facial, fabulous design’. The KP RTI Act 2013 declares information obtained through this law a punishable offence if the information is used for ‘malafiedly purposes with ulterior motives with facial, fabulous design’. An RTI law should only be concerned about facilitating access of citizens to maximum information in a cost-effective and easy manner as there are other laws to deal with issues pertaining to the misuse of information.

# Lessons Learnt: Key Advocacy Challenges of Producing Effective RTI Legislation

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Civil society groups in Pakistan have rich experience of not only getting new RTI laws enacted where these laws were not in place in Khyber Pakhtunkhwa and Punjab provinces, they have been able to repeal one of the three ineffective RTI laws in the field.

When the FOIO 2002 was promulgated, many civil society organisations outrightly rejected it saying it was a weak law. Some even said that this law was promulgated to facilitate citizens' access to information, instead it was aimed at curtailing their access to information. However, there were couple of organisations which started using this law to get empirical evidence to see how effective this law actually was. Especially, Centre for Peace and Development Initiatives (CPDI) sent a large number of information requests to federal public bodies, lodged complaints with Federal Ombudsman and kept on sharing the findings at public forums. CPDI was able to establish with evidence-based findings that it was not a good law and it strengthened its voice to demand for the repeal of FOIO 2002. That is why PML-N and PPP committed in Charter of Democracy that the FOIO 2002 will be replaced and a new and effective RTI law will be enacted.

One of the major successes of civil society groups in Pakistan has been the inclusion of Article 19-A into the constitution. They were able to identify progressive members of Constitution Reforms Committee and impressed upon them to include this right in the constitution. Article 19 only talks about freedom of expression though superior judiciary had interpreted it to include right to information as well saying that freedom of expression is meaningless without right to information. However, specific acknowledgement of this right through an article and its inclusion in chapter of fundamental rights in the constitution strengthened the hand of civil society activists in demanding RTI legislation in KP and Punjab.

No matter how big and strong one organisation may be, it is always better to work on a united platform. Civil society groups in Pakistan learnt this lesson and formed the Coalition on Right to Information (CRTI) on December 16, 2012. This coalition has made critical and timely interventions which have proven to be very effective in strengthening RTI movement in the country.

Politicians love transparency when they are out of power and hate it once in power. When 2013 elections were around the corner, CRTI decided to engage political parties on the issue of RTI legislation. As a result of this engagement, political parties included in their election manifestoes specific commitments to legislate on RTI. CRTI built capacity of journalists to report on intricacies and complexities of RTI laws. As a result, journalists were able to contribute stories which demonstrated deeper understanding of RTI legislation. Furthermore, they were able to get specific commitments from politicians to legislate on the issue

of RTI. For example, the Punjab chief minister publicly committed, as reported on March 13, 2013, that an RTI law would be the first one that his government would enact if it came into power again. This public pledge came handy when there was dithering on the part of the Punjab government on the issue of RTI legislation.

Constructive engagement with political governments also helps in enacting RTI laws. Even when there is political will, political governments lack technical expertise in enacting effective RTI laws, a fact exploited by the bur bureaucrats. Whether federal or provincial RTI law drafts that were prepared by bureaucracy were extremely ineffective. Civil society groups gave substantive comments on these drafts and shared those comments telling how these laws were and how these laws could be improved. For example, CPDI gave detailed drafts prepared by Punjab, Sindh and KP governments and these drafts were eventually improved in the light of the comments.

Throughout the RTI legislation process in Pakistan, a watchful eye needs to be kept on bureaucrats as they leave no opportunity to weaken the RTI regime sensing that RTI laws will herald power shift and will make them accountable to citizens.

Civil society groups also made good use of social media and engaged supporters of political parties on the merits and demerits of draft laws and they prevailed upon political leadership to improve those laws.

# Lessons Learnt: Key Challenges of Operationalization of RTI Laws in KP and Punjab

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There have been three major challenges with regard to the operationalization of KPRTI Act 2013 and the PTRTI Act 2013 – the lack of political support, bureaucratic shenanigans and the lack of capacity of some of the information commissioners.

The Punjab Information Commission did not get any support from the Punjab government in operationalising the PTRTI Act 2013. It is demonstrated by the fact that of the 43-member staff required and requested by Punjab Information Commission, only two officers and three persons working on daily wage basis were provided to the Punjab Information Commission throughout its 3-year tenure. Furthermore, Punjab government allocated Rs30 million for advertisement of the PTRTI Act 2013 in 2013-14 but in the subsequent years, this budget was slashed to Rs1 million. Service rules have not been approved by Punjab government and as a result Punjab Information Commission cannot hire staff to carry out its functions.

The situation in Khyber Pakhtunkhwa has been much better and there has been political support to the operationalization of the KP RTI Act 2013. However, there has been resistance by bureaucracy and as a result rules of business of KP RTI Act 2013 were not

approved by mid-2017. The KP Law Department was observed delaying the approval of these rules on one pretext or the other.

The Punjab government initially agreed to holding trainings for PIOs in Management Professionals Development Department (MPDD). However, after a couple of trainings, it backed out of its commitment. As a result of this, the Punjab Information Commission has been relying on civil society groups to carry out trainings of PIOs in different districts of the province on their roles and responsibilities under KP RTI Act 2013.

There have been capacity related issues of some of the information commissioners. As a result, while the Punjab Information Commission took progressive steps and there has been progressive interpretation of the PTRTI Act 2013, this has not been the case in KP. For example, originally, the head of public body is not made responsible to act as a PIO if a PIO has not been designated under the PTRTI Act 2013. However, the Punjab Information Commission interpreted the PTRTI Act 2013 in highly progressive manner and head of public body is declared a PIO under the PTRTI Rules 2014. Such progressive interpretation of the law has not been witnessed in KP. For example, the KP Information Commission denied a citizen information which he asked from Peshawar High Court though the applicant had mentioned that this court is a public body because it performs 'public functions' and any organisation which performs public functions should be declared a public body as is mentioned in the KP RTI Act 2013.

Both the Punjab Information Commission and KP Information Commission have not been able to decide on complaints within stipulated timeframe creating bad publicity for these laws. Both the KP Information Commission and Punjab Information Commission

are legally bound to ensure proactive disclosure of information and both these commissions are empowered to impose fine on PIOs for not taking steps to share information in proactive manner. However, there have been no fines with regard to this.

It was in the mandate of Punjab Information Commission and KP Information Commission to review all those laws, executive orders and rules that are in conflict with the spirit of their respective laws and recommend to their governments to repeal those laws or bring them into harmony with their laws. However, this has not been done. Though the PTRTI Act 2013 and the KP RTI Act 2013 override all other laws but even then anti-information legal regime needs to be brought in line with these laws because officials often refer to this legal regime even in the presence of these RTI laws.

One of the major responsibilities of KP Information Commission and Punjab Information Commission was to ensure that public bodies designate PIOs. Many public bodies have not designated PIOs and in many cases where PIOs were designated, they got retired, transferred or deceased. It is important that the KP Information Commission and Punjab Information Commission designate PIOs by designation/post and not by name.

In a nutshell – the key lesson with regard to the operationalization of both the KP RTI Act 2013 and the PTRTI Act 2013 is that even independent and autonomous information commissions are no guarantee for the implementation of RTI laws. Civil society groups need to stay vigilant and keep on mounting pressure on information commissions to ensure proper implementation of their respective laws.



# Recommendations for an Effective RTI Legal Regime in Pakistan

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Following are some of the key recommendations based on the overview of RTI legal regime in Pakistan:

1. The FOIO 2002 should be repealed and instead an RTI Bill 2013 approved unanimously by all major political parties in the Senate should be enacted.
2. The Balochistan FOI Act 2005 should be repealed and a new law on the lines of those enacted in Sindh, Khyber Pakhtunkhwa and Punjab should be enacted in Balochistan after consultations with civil society groups.
3. Service rules should be approved so that the Punjab Information Commission could recruit requisite staff to carry out its functions.
4. The Punjab Information Commission should be given proper funds so that it could launch advertisement campaign to create awareness about the PTRTI Act 2013 throughout Punjab province.
5. The Punjab government should instruct Management Professionals Development Department to conduct trainings

of PIOs in partnership with the Punjab Information Commission.

6. The Rules of Business of the KP RTI Act 2013 should be approved immediately.
7. The Sindh government should take steps to operationalise the STRTI Act 2016.
8. All laws, executive orders, rules etc., which are in conflict with the KP RTI Act 2013, the PTRTI Act 2013 and the STRTI Act 2016 should be repealed, or brought in harmony with the requirements of these laws.
9. The Khyber Pakhtunkhwa, Punjab and Sindh provincial governments should instruct all their respective departments responsible for the training of officials to ensure that their respective RTI laws are also part of the training modules.
10. All information commissions in all four provinces should be given financial and administrative autonomy in letter and spirit of these laws.



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